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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,160	10/23/2003	Ulrich Deiss	2001PI3005WOUS	8357
46726	7590	02/13/2006	EXAMINER	
JOHN T. WINBURN 100 BOSCH BOULEVARD NEW BERN, NC 28562			TRAN, HANH VAN	
			ART UNIT	PAPER NUMBER
			3637	
DATE MAILED: 02/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/692,160	DEISS ET AL.	
	Examiner	Art Unit	
	Hanh V. Tran	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 23 October 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 8-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 October 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/1/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

1. This is the First Office Action on the Merits from the examiner in charge of this application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In each independent claim, there is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble clearly indicates that a subcombination is being claimed, e.g., a device for adjusting the height position of a dishware basket..., comprising..." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of a "device," the dishware basket and its components being only functionally recited. This presents no problem as long as the body of the claim also refers to the dishware basket functionally, such as, "configured to arrange on a side wall of the dishware basket" or "adapted to be mounted on said basket struts". The problem arises when the dishware basket is positively recited within the body of the claim, such as, "a basket support plate arranged on a side wall of the dishware basket" or "said support plate mounted on said basket struts". In this case, there is an inconsistency within the claim. The preamble indicates subcombination, while in the body of the claim in at least one instance there is a positive

recital of structure indicating that the combination of a device and dishware basket is being claimed. The examiner cannot be sure if applicant's intent is to claim merely the device or the device in combination with a dishware basket. Applicant is required to clarify what the claim is intended to be drawn to, i.e., either the device alone or the device in combination with the dishware basket, and the language of the claim be amended to be consistent with the intent. For the purpose if this examination, the examiner is considering that the claims are drawn to the combination.

Claim 8, each of the limitations "said adjustment lever and said basket support plate engage automatically" and "“said adjustment lever and said basket support plate disengage" is vague, thus indefinite for failing to clearly define whether the lever and the support plate engage to or disengage from each other or some other element(s).

Claim 10, the limitation of the catch hook having "an undercut for adjusting the actuation force" is vague, thus indefinite for failing to define how the undercut allows adjustment of the actuation force.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 8-17 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2005/0039782 to Kim.

Kim discloses a device in combination with a dishware basket comprising all the elements recited in the above listed claims including, such as shown in Figs 1-7, (1) a basket support plate 101 arranged on a side wall of the dishware basket formed from horizontally and vertically extending basket struts; said support plate 101 mounted on said basket struts and including rollers 102 mounted thereto; said support plate 101 adjustably mounted on said dishware basket at different height positions by an adjustment lever 110; said adjustment lever 110 swivelly mounted to said basket support plate and including a handle end located in a recess formed in said basket support plate; said adjustment lever including a catch hook 116 arranged on said handle end oriented to the dishware basket interior and located in said recess; said adjustment lever 110 and said basket support plate 101 engage automatically when said dishware basket is moved from a lower height position into and upper height position on said horizontally extending basket struts; said adjustment lever 110 and said basket support plate 101 disengage after a handle part on said handle end is actuated in the direction of said dishware basket interior from said horizontally extending basket struts and said dishware basket moves automatically from said upper height position into said lower height position; said adjustment lever 110 coupled to a spring 115 which biases said adjustment lever to swivel back in an opposite direction after said handle part is actuated in a first direction; said adjustment lever 110 attached with said rollers 102 on said basket support plate 101 and said adjustment lever swivel-mounted near the upper

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edge of said basket support plate in said recess facing a wall of said rinsing container; and said adjustment lever arranged on the side of said basket support plate; wherein said catch hook 116 having an undercut for adjusting the actuation force; said basket support plate provided at its ends with guide elements 103 which at least partially enclose said vertical basket struts 23 of said dishware basket.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 8-10, and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Germany 195 12 128 to Graute.

Graute discloses a device in combination with a dishware basket comprising all the elements recited in the above listed claims including, such as shown in Figs 2-4, (1) a basket support plate 7 arranged on a side wall of the dishware basket formed from horizontally and vertically extending basket struts; said support plate 7 mounted on said basket struts and including rollers 9 mounted thereto; said support plate 7 adjustably mounted on said dishware basket at different height positions by an adjustment lever 15; said adjustment lever 15 swivelly mounted to said basket support plate 7 and including a handle end 16 located in a recess formed in said basket support plate 7; said adjustment lever 15 including a catch hook 17 arranged on said handle end 16 oriented to the dishware basket interior and located in said recess; said adjustment lever 15 and said basket support plate 7 engage automatically when said dishware

basket is moved from a lower height position into and upper height position on said horizontally extending basket struts; said adjustment lever 15 and said basket support plate 7 disengage after a handle part on said handle end is actuated in the direction of said dishware basket interior from said horizontally extending basket struts and said dishware basket moves automatically from said upper height position into said lower height position; said adjustment lever 15 coupled to a spring 25 which biases said adjustment lever to swivel back in an opposite direction after said handle part is actuated in a first direction; said adjustment lever 15 swivel mounted near the upper edge of said basket support plate 7 in said recess facing a wall of said rinsing container; and said adjustment lever 15 arranged on the side of said basket support plate; wherein said catch hook 17 having an undercut for adjusting the actuation force; said basket support plate provided at its ends with guide elements, such as shown in Fig 2, which at least partially enclose said vertical basket struts 12 of said dishware basket.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Good et al, Austin, Favaro, Smith et al, Daily, Morgan, Doepleke, Guth, Geiger, Schroder, Bastuji et al, and Altun et al all show structures similar to various elements of applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh V. Tran whose telephone number is (571) 272-6868. The examiner can normally be reached on Monday-Thursday, and alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HVT
February 4, 2006

Hanh V. Tran
Art Unit 3637